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LADYSMITH-HAWKINS SCHOOL SYSTEMS,  
JOINT DISTRICT NO. 1; BOARD OF  
EDUCATION OF LADYSMITH; JAMES F.  
BUCHHOLZ, CLERK OF BOARD OF  
EDUCATION,

DECISION ON APPEAL

Petitioners,

Case No. 5218

vs.

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION, MORRIS SLAVNEY,  
CHAIRMAN,

Decision No. 14719-B

Respondent.

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On April 24, 1975, Tina Faust signed a contract to teach in the petitioners' school system. Written on the face of the contract was the following:

"This contract is issued and accepted by both parties with the understanding that it will not be renewed under any circumstances for the 1976-1977 school year."

She was not renewed for the '76-'77 year, and on March 15, 1976 filed a grievance alleging violations of the collective bargaining agreement between the District and the Ladysmith-Hawkins Education Association resulting in her nonrenewal, and ultimately requested binding arbitration. The School Board took the position at all times that the grievance over nonrenewal was not covered by the collective bargaining agreement and refused to arbitrate.

On June 7, 1976 Faust filed a petition for writ of mandamus in the Office of the Clerk of Circuit Court for Rusk County praying that the Court order the Board to renew her contract. On June 8, 1976 the Association filed a complaint with the Wisconsin Employment Relations Commission alleging the District by its refusal to arbitrate committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5 stats. On June 22, 1976 the Circuit Court for Rusk County quashed the writ and dismissed the mandamus action. Faust has appealed to the Supreme Court and the case is pending in that court at the present time.

On September 14, 1976 hearing was held on the complaint filed by the Association and the examiner concluded that on its face the grievance was covered under the bargaining agreement and ordered arbitration. The Commission affirmed on April 27, 1977. The District takes this appeal pursuant to Sec. 227.16 stats. from the Commission's affirmance of the examiner's findings and conclusions.

The brief of respondent as well as the examiner's memorandum assert that the issue is whether the Faust grievance states a claim which on its face is covered by the bargaining agreement. If so, the issue of whether the nonrenewal is in fact subject to any provision of the bargaining agreement rests with the arbitrator. On the other hand, the District urges that clearly the bargaining agreement does not cover nonrenewals and that Faust ought not be entitled to utilize two different forums to decide the same issue. She should be estopped they say and/or the decision of the circuit court is res judicata until overturned by the Supreme Court of the state.

It goes without saying that it is expensive for both court and litigant time and moneywise to have an issue being handled by two different jurisdictions. If the Supreme Court should happen to agree with the trial court, the Association (Faust)

still claims the issue is litigable under the bargaining agreement via arbitration so conceivably we could, if they are correct, have two directly opposed results.<sup>1</sup>

Somewhere along the line it would seem that the issue of nonrenewal ought be settled. For an arbitrator now to interpret the bargaining agreement finding that nonrenewal is a proper reason to invoke the grievance procedure and then determine that the board should have renewed all in spite of what the Supreme Court does or might do, seems a bit ludicrous.

Article XVII, Staff Reduction p. 21 Bargaining Agreement (Joint Exhibit No. 1) was referred to by the examiner in his findings.<sup>2</sup> It was also addressed in the examiner's memorandum where it said:

"The examiner did not find that Article XVII was applicable to the grievance."

This Court agrees with the commission and considers Article XVII not to be material to the issue of whether nonrenewal is a proper grievance subject to arbitration.

Unless Article VI, Grievance Procedure, Section A, and/or Article VII, Working Conditions and Individual Rights, Section D, of the agreement are broad enough to cover nonrenewal the commission's order ought be reversed and set aside. Article VI, Section A, defines grievance as "any complaint regarding wages, hours, or conditions of employment." This is not a wage or hours of employment complaint and this Court sees no remote relationship between nonrenewal and the phrase "or conditions of employment." Furthermore, the legislature has set forth the procedure to be followed if there is to be nonrenewal. (Sec. 118.22 stats.) It is inconceivable that the parties intended to enlarge the statutory procedure for nonrenewal by this article of the bargaining agreement. I find nothing in the definition that supports the conclusion of law made by the commission that nonrenewal is covered on the face of the bargaining agreement.

Article VII, Section D, says that "no teacher shall be disciplined, reprimanded or deprived of any professional advantage without just cause. Whether just cause exists in any case shall be subject to the grievance procedure." The meaning of nonrenewal could be stretched beyond elasticity and imagination and be considered a deprivation of professional advantage, but again it is highly unlikely the parties intended it to be broad enough to cover nonrenewals. I agree with and adopt Arbitrator Arlen C. Christensen's language (p. 5 record of hearing before examiner) as follows:

"Nonrenewal has long been a well-known term of art in teacher employment. If the clause had been intended to apply to nonrenewals, the parties clearly knew how to it so there would be no doubt and they did not....."

It follows that the conclusion of law of the Commission interpreting the bargaining agreement as being broad enough on its face to encompass nonrenewal as a covered grievance is erroneous and incorrect. This Court is not bound by the conclusion. Milwaukee v. WERC 71 Wis. 2d 709.

Petitioners also urge that respondent be either estopped to assert that nonrenewal is covered by the grievance procedure of the contract in the light of the circuit court decision in the mandamus action, or that the doctrine of res adjudicata is applicable. In view of the determination made by this Court that the bargaining

<sup>1</sup> It should be pointed out that the circuit court (by the writer of this decision) decided the mandamus action on the merits and did not decide that mandamus was not the proper procedural vehicle for raising the issue. It is hardly conceivable that the Supreme Court will duck the issues presented by concluding that the remedy sought was wrong, so the result of the appeal will either renew Faust or affirm the nonrenewal action of the board.

<sup>2</sup> The District claims that this article was not in the agreement which was in force at the time the teaching contract was entered into.

contract on its face is not broad enough to cover nonrenewal under the grievance procedure, these assertions need not be dealt with in detail. Conceivably, the issues in both procedures could be interpreted as being different. The Union on the one hand considers the issue to be one of collective bargaining contract interpretation asserting that parties can contract for nonrenewal procedure apart from statute, and, further, that it as one of the contracting parties can assert the issue regardless of what happens in the mandamus action appeal. Respondents urge the opposite, namely, that the issues are the same and the parties sufficiently identical to have the court invoke the principle of res adjudicata. Neither estoppel nor res adjudicata seem to this Court appropriate under the circumstances to frustrate the Union's action, although it feels that the issue indeed will be settled by the Supreme Court in its decision when it is forthcoming.

In view of the foregoing the order of the Wisconsin Employment Relations Commission be and is reversed and the complaint of the complainant Ladysmith-Hawkins Education Association against Ladysmith-Hawkins School Systems Joint District No. 1 be and is dismissed.

Dated this 6th day of June, 1978.

BY THE COURT:

Robert F. Pfiffner /s/  
Circuit Judge